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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CONSUMER FINANCIAL PROTECTION BUREAU,

Plaintiff,

vs.

Case No. 1:22-cv-29
(LJV)

October 12, 2023

CRAIG MANSETH,
JACOB ADAMO,
DARREN TURCO,
UNITED DEBT HOLDING LLC,
JTM CAPITAL MANAGEMENT, LLC,
UHG, LLC,
UHG I LLC, a/k/a United Holding Group
UHG II LLC, Collectively holding
themselves out as United Holding
Group, United Holding Group, LLC
and United Holdings Group, LLC

Defendants.

TRANSCRIPT OF ORAL ARGUMENT - via ZOOM FOR GOVERNMENT
BEFORE THE HONORABLE LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

CONSUMER FINANCIAL PROTECTION BUREAU
BY: STEPHANIE C. BRENOWITZ, ESQ.
VANESSA ANNE BUCHKO, ESQ.
STEPHANIE B. GARLOCK, ESQ.
CHRISTOPHER D. JACKSON, ESQ.

1700 G Street, NW
Washington, D.C. 20552
For the Plaintiff

LIPPES MATHIAS LLP
BY: BRENDAN H. LITTLE, ESQ.

50 Fountain Plaza
Suite 1700
Buffalo, New York 14202

And

BROWNSTEIN HYATT FARBER SCHRECK, LLP
BY: MATTHEW C. ARENTSEN, ESQ.

SARAH J. AUCHTERLONIE, ESQ.
675 Fifteenth Street
Suite 2900
Denver, Colorado 80202
For the Defendant Craig Manseth

LAW CLERK: **CHELSEA R.C. THOMEER, ESQ.**

COURT DEPUTY CLERK: **COLLEEN M. DEMMA**

COURT REPORTER: **ANN M. SAWYER, FCRR, RPR, CRR**
Robert H. Jackson Courthouse
2 Niagara Square
Buffalo, New York 14202
Ann_Sawyer@nywd.uscourts.gov

02:40PM 1 (Proceedings commenced at 2:40 p.m.)

02:40PM 2 THE COURT: Can everybody hear me?

02:40PM 3 MR. LITTLE: Good afternoon, Judge.

02:40PM 4 THE CLERK: I'll call the case, Judge.

02:40PM 5 The United States District Court for the Western

02:40PM 6 District of New York is now in session, the Honorable

02:40PM 7 Lawrence J. Vilardo presiding.

02:40PM 8 22-CV-29, Consumer Financial Protection Bureau versus

02:40PM 9 Manseth, et al.

02:40PM 10 Attorneys Stephanie Brenowitz, Vanessa Buchko,

02:41PM 11 Stephanie Garlock, and Christopher Jackson, appearing on

02:41PM 12 behalf of the plaintiff.

02:41PM 13 Attorneys Matthew Arentsen, Sarah Auchterlonie, and

02:41PM 14 Brendan Little, appearing on behalf of the defendants.

02:41PM 15 All parties are appearing by Zoom videoconference,

02:41PM 16 and this is the date set for an oral argument.

02:41PM 17 THE COURT: Okay. Good afternoon, everybody. Let me

02:41PM 18 start by saying what I've been saying at the beginning of all

02:41PM 19 these conferences that we've done by phone or by Zoom, and

02:41PM 20 that is that no one is to record or rebroadcast this in any

02:41PM 21 way. That's under penalty of contempt and the sanctions that

02:41PM 22 might go along with it.

02:41PM 23 So who's going to argue on behalf of the defendants?

02:41PM 24 MR. LITTLE: I am, Judge.

02:41PM 25 THE COURT: Okay. And who's going to argue on behalf

02:41PM 1 of the plaintiff?

02:41PM 2 MS. GARLOCK: I am, Your Honor.

02:41PM 3 THE COURT: Ms. Garlock?

02:41PM 4 MS. GARLOCK: Yes.

02:41PM 5 THE COURT: Okay. So, Mr. Little, I guess it's your
02:41PM 6 motion for a stay, so the floor is yours to begin.

02:41PM 7 MR. LITTLE: Thank you, Judge.

02:41PM 8 May it please the Court, I think the five factors are
02:41PM 9 well briefed before the Court, and the rationale. I'm not
02:42PM 10 gonna repeat my brief on that. I think those factors are well
02:42PM 11 settled.

02:42PM 12 I'd like to go right into the CFPB's arguments why a
02:42PM 13 stay is not warranted, if I could, to expedite this process.

02:42PM 14 THE COURT: Yep.

02:42PM 15 MR. LITTLE: The first, the CFPB argued that
02:42PM 16 originally the defendants did not argue about the
02:42PM 17 constitutionality of the existence of the CFPB, and that is
02:42PM 18 entirely accurate. We moved in early 2022, long before the
02:42PM 19 5th Circuit found it being unconstitutional, I think there was
02:42PM 20 a mistake or a typo in the opposition brief saying we did not
02:42PM 21 mention it in oral argument in March 2023. There was not an
02:42PM 22 argument in 2023, it was in January of '23. The U.S. Supreme
02:42PM 23 Court granted cert in February of 2023.

02:42PM 24 So, at the time, yes, we raised the 5th Circuit's
02:42PM 25 existence or the case of -- with the Court, but did not

1 advocate for a stay. It is not until the Supreme Court
2 ultimately granted cert and, of course, has heard argument
3 already.

4 THE COURT: Let me -- let me tell you -- let me cut
5 to the quick even a little more. The argument that the
6 plaintiffs make that turns my head a bit, Mr. Little, is the
7 prejudice to them from, you know, memories fading and not
8 being able to conduct some discovery within the next eight
9 months. What's the reason that we should stay this altogether
10 and not just perhaps impose a schedule that would allow some
11 but not exhaustive discovery to take place in the next eight
12 months? Why aren't they entitled to at least preserve what
13 they want to preserve in connection with the litigation?

14 MR. LITTLE: Judge, because before this litigation
15 was filed, they did two years worth of discovery to the CID
16 process. We, the defendants, have turned over terabytes of
17 information, which is supposedly the basis for the amended
18 complaint. That's where they got all of the supposed
19 recordings and information, et cetera.

20 So unlike a traditional, you know, plaintiff versus
21 defendant lawsuit, the government has availed themselves of
22 their opportunity to serve the CIDs and, you know, hundreds if
23 not --

24 THE COURT: Have -- have they taken depositions?

25 MR. LITTLE: They have not taken -- they have not --

02:44PM 1 they have sat for some information, but they have not taken
02:44PM 2 depositions of the individual defendants.

02:44PM 3 THE COURT: So, so, and I think that that's what
02:44PM 4 they're talking about when they talk about, you know, memories
02:44PM 5 fading, that there are things that they'd like to preserve
02:44PM 6 now. And so, again, my question to you is: What -- what is,
02:44PM 7 you know, I understand what the harm is. The harm is that you
02:44PM 8 may not have to do any of this if the Supreme Court decides
02:44PM 9 that the 5th Circuit was right. But --

02:44PM 10 MR. LITTLE: And --

02:44PM 11 THE COURT: -- but we don't know that that's going to
02:44PM 12 be the case. And, you know, so it seems to me that there is
02:44PM 13 at least some interest on the plaintiff's part that there not
02:45PM 14 be a complete stay, but as I say, perhaps, you know,
02:45PM 15 scratching the itch that they say they have with respect to
02:45PM 16 preserving memories, preserving evidence that might be lost as
02:45PM 17 memories fade. I understand that.

02:45PM 18 MS. AUCHTERLONIE: If I may, Your Honor, I've
02:45PM 19 represented the defendants in the CID process, and there have
02:45PM 20 been three investigational hearings which are like a
02:45PM 21 deposition, however they're under the administrative
02:45PM 22 authority, two former employees and one of the owner, Craig
02:45PM 23 Manseth. So they do have that testimony preserved.

02:45PM 24 THE COURT: Okay. Thank you.

02:45PM 25 MR. LITTLE: Thank you, Sarah. Yeah.

02:45PM 1 And, Judge, it's also the cost, right? I mean, you
02:45PM 2 know, we've spent hundreds of thousands of dollars already in
02:45PM 3 the CID process, and so, you know, all of the, quote, unquote,
02:45PM 4 evidence that's out there is really not in the possession of
02:45PM 5 the defendants, these are these supposed, you know, consumers
02:46PM 6 that are out there or the agencies that have been making the
02:46PM 7 telephone calls.

02:46PM 8 Remember, Judge, this is not about what -- UHG's
02:46PM 9 conduct, this is about UHG supposedly ignoring the conduct of
02:46PM 10 third parties.

02:46PM 11 THE COURT: Right.

02:46PM 12 MR. LITTLE: So this has nothing to do with, per se,
02:46PM 13 UHG's conduct. So that -- and they have the information
02:46PM 14 already, that's supposedly the basis for the amended complaint
02:46PM 15 when they got to the CID process. And then we have the cost
02:46PM 16 of this, argument was already had. I get that, you know, some
02:46PM 17 of these denials were out there, because, hey, we don't even
02:46PM 18 know if the Supreme Court's gonna take this. Okay. Then they
02:46PM 19 have taken it. Oh, we don't even have an argument yet. The
02:46PM 20 argument's already happened. I mean, this is kind of a unique
02:46PM 21 scenario when in making an application for a stay, the
02:46PM 22 argument has already taken place. So we're talking about a
02:46PM 23 short delay. We're talking about --

02:46PM 24 THE COURT: Well, it could be, I mean, you say
02:46PM 25 "short." The Supreme Court often has a flurry of opinions in

1 May and June, right? So we could be talking nine months.

2 MR. LITTLE: Sure. But it's not -- I agree, Judge,
3 but it's, you know, in a typical fashion, sometimes we're
4 asking for an 18-month stay, right?

5 THE COURT: Yeah.

6 MR. LITTLE: Because they just had granted cert,
7 briefings done, arguments had. Yes, I'll grant it, six months
8 is six months. But, you know, in the grand scheme of things
9 of Supreme Court litigation, six months is, I guess, rather
10 quick.

11 THE COURT: Yeah. Let me ask Ms. Garlock, what do
12 you need? Why -- why should -- well, let me -- let me ask
13 another question first.

14 The way -- it seems to me that the weight of the
15 authority seems to be in favor of granting the stay.

16 You've got a couple Massachusetts cases and an
17 Illinois case on the District Court level. You don't have
18 anything from the 2nd Circuit, at least I don't see anything
19 cited from courts in the 2nd Circuit that have denied stays.

20 Would you agree with me that the weight of the
21 authority seems to be in favor of staying?

22 MS. GARLOCK: I wouldn't agree that the weight of the
23 authority is in favor of staying, in part because there are
24 decisions on both sides. The bureau has consistently opposed
25 a stay and has -- and courts have continued to move forward,

1 including even courts evaluating the merits of the
2 constitutional argument which, again, this is something this
3 Court doesn't have to do since it's --

4 THE COURT: Right.

5 MS. GARLOCK: -- not before -- before you now.

6 So, I mean, I think, you know, courts across the
7 country are dealing with relatively similar sets of concerns,
8 although obviously applying them in different cases.

9 Here we have quite significant showing of ongoing
10 consumer harm, the same exact kind of consumer harm evidence
11 that the District Court in Illinois found in TransUnion. And
12 so while we don't have cases in the 2nd Circuit, we also would
13 again point to some of the discussion of why I think the
14 Credit Acceptance Corp. and MoneyGram courts were faced with a
15 little bit of a different decision than Your Honor has --

16 THE COURT: Do you have any decisions -- so I've
17 noted two Massachusetts cases, one from the Illinois court,
18 Northern District, I think, of Illinois. And then the only
19 other case I think you cite is a Surrogate's Court case from
20 the 9th Circuit. Are there any other cases that you have?

21 MS. GARLOCK: So those are the cases denying stays.
22 But there are also of court cases that are just moving forward
23 where there might have been other procedural hurdles, but
24 where courts have -- I know the bureau has won at summary
25 judgment several times since the Supreme Court granted cert in

CFSA. So there are certainly zero enforcement actions moving forward across the country.

I have one other case I'd like to draw your attention to which might be a little bit of a model here, which is -- and it's not cited in our papers since much of this was a discussion in a hearing. Let me pull it up. It's the Bureau of Litigation against Fifth Third in the Southern District of Ohio, that's 21-cv-262. There was a hearing on pleadings in that case, but discovery was ongoing. And the district court at a hearing in the spring indicated, you know, it was an extensive discovery hearing, it took all day, and the Court decided that it wanted to move forward on deciding a motion for judgment on the pleadings to the extent there were nonconstitutional grounds. And so we think that is -- could be a model here, not that there is a pending motion raising the constitutional issue, but for many of the same reasons allowing the Bureau to continue to pursue discovery notwithstanding that there is obviously some open constitutional question. And we think --

THE COURT: So let me ask you this. When you talk about the cases that are ongoing where there has not been a decision made, I assume that's because the defendants have not asked for a stay.

MS. GARLOCK: So in some of them they didn't ask for a stay. There was -- there was one of the cases cited in our

1 brief, Credit -- sorry, Consumer Advocacy Center in the
2 Central District of California, there was a summary judgment
3 case and the defendant made the motion on the merits. He --
4 or, he didn't oppose that the Bureau's summary judgment motion
5 on the merits, raising the funding issue is also in a footnote
6 said you also could stay this litigation, the Court didn't see
7 the need to stay the litigation, and decided summary judgment
8 in favor of the Bureau, and that case is now on appeal in the
9 9th Circuit.

10 THE COURT: Okay. But let --

11 MS. GARLOCK: So there's a variety of different
12 things, but we think that TransUnion is also -- you know, the
13 Northern District of Illinois case is possibly the most
14 helpful to you.

15 THE COURT: No, I understand, and I'm not -- and I'm
16 not -- I'm not trying to -- to look at the quality of the
17 decisions, I just want to look at the quantity of the
18 decisions. And in your -- and you seem to be fighting me on
19 numbers that -- that doesn't seem like it's a fight you're
20 gonna win because Mr. Little cites, you know, I don't know, a
21 dozen cases maybe, and you've given me three.

22 MS. GARLOCK: Sorry, Your Honor. I would just say, I
23 don't think it's a dozen cases. There are, you know, there
24 are of course the two cases in the Southern District of
25 New York, which we've explained why we think they're

1 distinguishable. I just don't think the numbers are 12 versus
2 three.

3 THE COURT: Okay.

4 MS. GARLOCK: But, you know, we're happy to -- we
5 don't think it's really ultimately a numbers game, it's more
6 about, you know, it's the evaluation of this case.

7 THE COURT: Yep. Okay. So, what do you need to --
8 tell me, so, a question that I -- that I often ask myself when
9 I have to decide things like this is what if I'm wrong.
10 What's the harm -- what's the harm that's going to occur if
11 I'm wrong.

12 And I understand -- and by "wrong" here, I mean,
13 there's no wrong, right, it's a discretionary decision on my
14 part. But by "wrong" I mean the Supreme Court ends up
15 deciding, affirming the 5th Circuit in the case that's pending
16 in the Supreme Court, I forget the name of it. That means
17 that we've now wasted a lot of money in discovery that didn't
18 need to have happened, and Mr. Little's clients are out a
19 substantial sum of money.

20 If -- if -- if the Supreme Court reverses and the
21 case -- this case proceeds, I understand your argument is that
22 we'll have lost, you know, eight months, or six months, or
23 five months, or whatever, of memory of some people. And --
24 and Ms. Auchterlonie says that you've gotten some depositions.

25 What do you need -- I mean, is there -- is there a

1 limited stay that I can impose here, and say, okay, here's
2 what we can do, the defendants will answer by a certain date
3 and you can take, you know, two depositions, and otherwise the
4 case is stayed. Is there some middle ground like that that
5 might solve the problem from your perspective?

6 MS. GARLOCK: So I think first we would, just to very
7 briefly hitch on no stay at all, you know, I -- I would point
8 the Court also to the harm beyond our ability to litigate this
9 case which is any amount, you know, we've -- we've obviously
10 covered that in our papers, the harm to consumers, and getting
11 them the relief they need. But so --

12 THE COURT: But tell me what the -- what's the real
13 harm there? Tell me what the real harm is there. I
14 understand this kind of esoteric harm, metaphysical harm,
15 but -- but tell me what the real issue is in delaying this
16 five or six or eight months in that regard.

17 I mean, I understand the reality of the harm in terms
18 of people not remembering today, what -- or, not remembering
19 in six months what they remember today. As I get older, I
20 understand more and more exactly that.

21 But -- but I'm not really grasping what the -- the
22 real harm is with respect to the delay and consumers
23 generally. Tell me -- tell me more about that.

24 MS. GARLOCK: I'm sorry, Your Honor, I was just
25 trying to very briefly, you know, make a pitch for the fact

1 that pitching this back six months might push back final
2 judgment.

3 THE COURT: Yeah. Okay.

4 MS. GARLOCK: We allege ongoing harm, we allege --

5 THE COURT: Yeah. I get it.

6 MS. GARLOCK: So that was a brief pitch.

7 THE COURT: And it's a good argument, it's just not
8 one that really turns my head. I'm a practical -- I like to
9 think of myself, anyway, as a practical guy. I practiced law
10 for 35 years and so, you know, I think I have a pretty good
11 sense of what's important, what's not important. And things
12 like this, while I'm not saying it's not important, it's
13 just -- there's not a real practical meat-and-potatoes injury
14 that you're talking about.

15 So tell me about -- so tell me about a -- perhaps a
16 middle ground that might solve the issue.

17 MS. GARLOCK: So we do also think that, you know, a
18 middle ground could be certainly requiring the defendants to
19 answer and then beginning discovery. And my colleague,
20 Stephanie Brenowitz, who's also here today and has been, you
21 know, more involved in some of the investigative stages of
22 this case might have a little bit of a better sense of, you
23 know, on a very specific level of, you know, which depositions
24 we might need, how many, you know, we're concerned both about
25 the witnesses on the -- on the part of the defendants and on

1 the part of the third-party debt collectors that they work
2 with, and consumers who we regularly have consumer witnesses
3 in our cases. I don't know whether we would decide to want to
4 have those here, but they are also people who might, you know,
5 over time not -- their memories would fade too. But of course
6 my colleague Ms. Brenowitz could -- could add anything more
7 specific.

8 THE COURT: Ms. Brenowitz.

9 MS. BRENOWITZ: Yes, good afternoon, Your Honor. We
10 would certainly be willing to consider a middle ground. As
11 Ms. Auchterlonie already said, we did take testimony from
12 Mr. Manseth. That was several years ago at this point.

13 And at that point, the Bureau had little, if any,
14 knowledge about one of the defendants in this case. The
15 United group, UHG, sorry, United Holding Group.

16 THE COURT: That's okay.

17 MS. BRENOWITZ: And so we had limited information.

18 Since that time, defendants are now contending that
19 both UDH and JTM are out of business, which is another issue
20 in terms of being able to obtain that evidence, documents,
21 witnesses, former employees. These are all things that have
22 changed since that testimony was taken. So certainly, we
23 would want to be able to depose the defendants and to be able
24 to conduct some third-party discovery which should really be
25 no cost to defendants. And that --

02:58PM 1 THE COURT: Well, except -- except they're going to
02:58PM 2 have to, I mean, they need a lawyer there, right?

02:58PM 3 MS. BRENOWITZ: For depositions, yes. But in terms
02:58PM 4 of obtaining --

02:58PM 5 THE COURT: Oh, document discovery, you mean?

02:58PM 6 MS. BRENOWITZ: Yes.

02:58PM 7 THE COURT: Okay.

02:58PM 8 MS. BRENOWITZ: You know, interviewing and obtaining
02:58PM 9 declarations. And I would also just like to briefly mention
02:58PM 10 that the ongoing harm here is also the fact that, as
02:58PM 11 Mr. Little mentioned, this is the conduct of third parties in
02:58PM 12 addition to the conduct of defendants that is continuing to
02:58PM 13 impact consumers every day. We are still receiving complaints
02:58PM 14 from people who have received phone calls and are paying, you
02:58PM 15 know, on these debts that are being collected unlawfully, and
02:58PM 16 that's nine months of consumers continuing to be impacted by
02:59PM 17 this harm, plus whatever the rest of the litigation is beyond
02:59PM 18 that, that is going to put out just that much longer until
02:59PM 19 those consumers receive the relief of not having to be, you
02:59PM 20 know, the victims of the defendant's misconduct by entering
02:59PM 21 that kind of a stay.

02:59PM 22 THE COURT: Okay. Mr. Little, what do you think
02:59PM 23 about this proposal of some sort of middle ground where we
02:59PM 24 allow some discovery to go forward but otherwise -- so -- so
02:59PM 25 we slow the case down, but we don't stop it.

02:59PM 1 MR. LITTLE: It's somewhat problematic, Judge,
02:59PM 2 because I hear the Bureau saying, hey, look, we want to talk
02:59PM 3 to third-party debt collectors, we want to talk to the
02:59PM 4 consumers. They had that opportunity during the CID process
02:59PM 5 and could have done that as part of their investigation. They
02:59PM 6 didn't need to start this lawsuit in order to make sure to
03:00PM 7 preserve those memories.

03:00PM 8 So if they didn't do that investigation long before
03:00PM 9 they started this lawsuit, that's on them. Right?

03:00PM 10 THE COURT: Well, I mean, yes and no. I mean, that
03:00PM 11 doesn't mean that they should be precluded now because of
03:00PM 12 another case that may call into question their authority to do
03:00PM 13 what they're doing. I mean, that doesn't mean, you know, I --
03:00PM 14 I -- I -- they didn't know that this was going to happen.
03:00PM 15 They had no way of knowing that there was going to be a motion
03:00PM 16 to stay. And it's kind of unfair, I think, to say to a
03:00PM 17 litigator, well, you should have done this three years ago,
03:00PM 18 and you didn't do it three years ago, so you can't do it now.
03:00PM 19 Well, I thought I was gonna be able to do it now, I didn't
03:00PM 20 think I was gonna need to do it three years ago.

03:00PM 21 MR. LITTLE: Fair, Judge. Fair.

03:00PM 22 But I guess the point I want to make is absent -- I
03:00PM 23 mean, I guess I could say common ground, yes, we could file
03:00PM 24 answers. But otherwise, if Your Honor recalls, as part of our
03:00PM 25 motion to dismiss there was no specific factual allegations in

03:01PM 1 the complaint, saying some consumers got these calls, they
03:01PM 2 didn't identify the third-party debt collectors. I can't in
03:01PM 3 good conscience and be a good lawyer allow my clients to sit
03:01PM 4 for depositions when I don't even have the factual basis for
03:01PM 5 the lawsuit.

03:01PM 6 So I have to go and conduct the \$100,000 worth of
03:01PM 7 discovery from the Bureau to get those recordings, to
03:01PM 8 understand who these consumers are that have these harms.

03:01PM 9 I don't have any factual basis to say, okay, this
03:01PM 10 consumer was called by this collection agency on this date,
03:01PM 11 and this is what was said or was not said.

03:01PM 12 I need all that information in advance so I can
03:01PM 13 prepare my clients and have them set down for depositions. So
03:01PM 14 I can't say oh, we can do one deposition of the defendant, or
03:01PM 15 two depositions of the defendant. I don't have any of the
03:01PM 16 discovery.

03:01PM 17 And so I would have to go spend, you know, tens if
03:01PM 18 not hundreds of thousands of dollars, and we're gonna get a
03:01PM 19 lot of data coming back, and there's gonna be a lot of
03:01PM 20 discovery costs coming here with third-party vendors in
03:01PM 21 processing all of this, and so I have an extreme cost. I
03:01PM 22 can't in good conscience let my client sit for a deposition
03:02PM 23 without seeing the evidence that's against us. So --

03:02PM 24 THE COURT: So you're saying -- you're saying --
03:02PM 25 you're saying that even if there were no stay, the depositions

1 are still a ways off because you need lots of documents and
2 lots of prep before those depositions can go forward?

3 MR. LITTLE: Absolutely, Judge.

4 THE COURT: Ms. Brenowitz, Ms. Garlock, why isn't he
5 right about that?

6 MS. BRENOWITZ: Your Honor, the documents and the
7 recordings that Mr. Little's referring to in this case, mostly
8 have come from the defendants. All of the recordings of
9 consumer phone calls have come from the defendants. They have
10 had them, they have much better access and organization to be
11 able to listen to those calls.

12 We've had to painstakingly piece together which call
13 belongs to which consumer, belongs to which paper documents.
14 So they have access to that, they've always had access to
15 that. We'd be more than happy to provide everything to them
16 again, but the documents in this case are mostly from
17 defendants.

18 And that is part of the reason why we would like to
19 proceed with third-party discovery as well. And we're more
20 than happy to provide that to the defendants but, again, most
21 of the evidence in this case has come from the documents that
22 defendants have provided to us of their limited supervision of
23 the debt collection agencies, of what the debt collection
24 agencies have provided to them over the years. And so they
25 have all -- all the same arguments run to what they could have

1 been doing with that information over the last several years.

2 Plus, there is the information that we couldn't have
3 obtained, haven't obtained, ongoing harm, the current
4 corporation that we barely knew about at the time of that
5 investigation, and all of that information that we had no
6 ability to obtain prior to the beginning of this lawsuit.

7 THE COURT: So --

8 MS. BRENOWITZ: And --

9 THE COURT: -- here's what I'd like to do. First of
10 all, I'm going to extend the defendant's time to answer or do
11 what they need to do with respect to responding to the
12 complaint.

13 Mr. Little, 30 days? Is that -- is that reasonable
14 for that?

15 MR. LITTLE: It is, Judge.

16 THE COURT: Okay. So, 30 days for the defendants to
17 answer.

18 And then I want both sides to submit to me a
19 proposal. And the proposal can be, you know, Mr. Little you
20 can say, look it, Judge, we just think that any discovery
21 taking place right now is harmful to us and we don't want to
22 do any.

23 I'm not saying I'm going to decide the stay in the
24 way that I'm suggesting that I'm thinking about deciding it, I
25 may deny it altogether, I may grant it altogether. I want

03:05PM 1 to -- I want to think about it some more, but I would like the
03:05PM 2 benefit of proposals from both sides as to what might be
03:05PM 3 palatable to them. So, you know, more or less a discovery
03:05PM 4 schedule between now and, let's say, next June, since I think
03:05PM 5 we're probably going to have a decision by then.

03:05PM 6 So, let's say a discovery schedule between now and
03:05PM 7 next June that -- that you can live with. And if the two
03:05PM 8 sides want to talk about it and submit one proposal that I
03:05PM 9 don't have to break a tie on, I'm happy to, you know, I'd love
03:05PM 10 that. But I think that that's probably unlikely. So you can
03:05PM 11 each submit something to me, and I, as I say, I will do
03:05PM 12 something in -- I'm not going to stay the time to answer. The
03:05PM 13 answer is due now 30 days. But I will give some thought and,
03:05PM 14 you know, make some decision with respect to somewhere on the
03:06PM 15 spectrum from complete stay to no stay, something -- and
03:06PM 16 there's lots of things in between. And I'll give some thought
03:06PM 17 to that.

03:06PM 18 Is that fair enough? Does that sound like a -- does
03:06PM 19 everybody understand what I'm saying, first of all?

03:06PM 20 MS. BRENOWITZ: Yes, Your Honor.

03:06PM 21 THE COURT: Mr. Little?

03:06PM 22 MR. LITTLE: Yes.

03:06PM 23 THE COURT: Okay. And does that -- anybody have a
03:06PM 24 strong objection to proceeding that way?

03:06PM 25 And let me know, folks. I second guess myself all

1 the time, so if you folks disagree with it, tell me.

2 MR. LITTLE: No, Judge, I'm happy to try to confer
3 with the Bureau, just give us some common ground, and if not
4 we'll submit our own proposal.

5 THE COURT: Great.

6 MR. LITTLE: And we'll cross that bridge when we get
7 there.

8 THE COURT: What do you think, Ms. Garlock, what do
9 you think is a reasonable time to allow you folks to talk and
10 then to submit a plan?

11 MS. GARLOCK: Off the top of my head, 14 days? You
12 know, if Your Honor wants it sooner we, of course, can talk
13 more quickly.

14 THE COURT: No, I think 14 days sounds reasonable to
15 me. Mr. Little, does that sound reasonable to you?

16 MR. LITTLE: It does, Judge.

17 THE COURT: Okay. So 14 days for that. So 14 days
18 from today -- let's say from tomorrow. So let's say the 27th,
19 since that's a Friday for that.

20 And then let's say -- what's 30 days from today?
21 It's probably a Saturday, I think, because today is a
22 Thursday, right?

23 THE CLERK: Yes, Judge.

24 THE COURT: So what's the following Monday?

25 THE CLERK: It's the 13th of November.

03:07PM 1 THE COURT: Okay. So, the 13th of November. That's
03:07PM 2 not a holiday, is it? Or is it?

03:07PM 3 THE CLERK: No. No, Friday is. The 10th.

03:07PM 4 THE COURT: Okay. The 13th of November for either a
03:07PM 5 joint submission or dueling submissions. Okay? And I'll
03:07PM 6 reserve the decision.

03:07PM 7 Anything else anybody wants to say to me before we
03:07PM 8 sign off today?

03:07PM 9 MR. LITTLE: Judge, the only thing --

03:07PM 10 THE COURT: Go ahead. Go ahead.

03:07PM 11 MR. LITTLE: The only thing I wanted to address in
03:07PM 12 response to the Bureau's argument with respect to the Illinois
03:07PM 13 case, the Northern District of Illinois case, there the
03:08PM 14 ongoing harm, there was a consent order in place, and so the
03:08PM 15 Court said, look, forget about the constitutionality of the
03:08PM 16 Bureau, we have a consent order in place. And so you need to
03:08PM 17 follow the order of the Court, or you're alleged to be not
03:08PM 18 following the order of the Court. So that's why I need to
03:08PM 19 address the ongoing harm. So, I know Ms. Garlock has
03:08PM 20 repeatedly said that that case is somewhat similar to this
03:08PM 21 case. There, of course, is no consent order in place, and
03:08PM 22 that is the stark difference in that case. I just wanted to
03:08PM 23 bring that to the Court's attention.

03:08PM 24 MS. AUCHTERLONIE: And if I may Your Honor? I also
03:08PM 25 wanted to bring to the Court's attention the Bureau has in

1 fact conducted third-party discovery on a number of the
2 agencies who were in the past working with defendants. And so
3 we are aware of both investigational hearings and significant
4 document requests propounded upon those third parties already.

5 THE COURT: Okay. So let me say this. What you
6 folks are doing right now makes me think I -- that just
7 submitting the proposals two weeks from now may not give you
8 folks enough to submit to me, so why don't we say in addition
9 to the proposals, you can submit a memorandum no more than
10 five pages in support of why your position is the better
11 position. And you can deal with things like the Illinois case
12 if you want to, Mr. Little, in that. Ms. Garlock, you can say
13 why Mr. Little is wrong about the Illinois case and why it
14 really is closer factually to what we're doing here. I'll
15 take whatever you guys want. But five pages, tops.

16 You've done a good job of briefing it already, I
17 don't want reinventing the wheel, I just want why. And,
18 again, I want to talk about the practicalities of this.
19 What's the real harm that's going to happen if we stay, if we
20 don't stay. That's what I want to get to. Okay?

21 MR. LITTLE: Thank you, Judge.

22 THE COURT: Okay. Thank you, all, very much. I look
23 forward to receiving, and I'll reserve decision. Thanks.

24 MS. BRENOWITZ: Thank you, Your Honor.

25 (Proceeding concluded at 3:09 p.m.)

CERTIFICATE OF REPORTER

In accordance with 28, U.S.C., 753(b), I
certify that these original notes are a true and correct
record of proceedings in the United States District Court for
the Western District of New York on October 12, 2023.

s/ Ann M. Sawyer

Ann M. Sawyer, FCRR, RPR, CRR

Official Court Reporter

U.S.D.C., W.D.N.Y.